(24)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

3145.661

JAMES C. JONES,
Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

No. 565

PETITION FOR WRIT OF CERTIORARI

To the Circuit Court of Appeals
for the Eighth Circuit
and

BRIEF IN SUPPORT THEREOF.

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to the Circuit Court of Appeals for the Eighth Circuit.

James C. Jones prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit.

The judgment of the Court of Appeals was entered on June 24, 1941 (R., p. 31).

The petition for rehearing was denied on July 23, 1941 (R., p. 41).

QUESTION PRESENTED.

Where the taxpayer (petitioner herein) purchases real estate subject to an existing mortgage which the taxpayer did not execute and did not assume or agree to pay, and

Where it is stipulated by the parties hereto and found by the Court as a fact that when the mortgage note became due the taxpayer's equity in the property was worthless because the value of the property was less than the amount of the mortgage note, and

Where the taxpayer (petitioner herein) determines to abandon the property on the date when the note falls due and permit the holder of the mortgage to foreclose, and

Where thereafter the holder of the mortgage does foreclose,

Does the loss sustained by the taxpayer (petitioner herein) result from the mortgage foreclosure sale, or is it an ordinary loss resulting from the depreciation of the property because of a change in business conditions?

STATEMENT OF THE CASE.

The case originated before the Board of Tax Appeals. The Commissioner (respondent herein) contended that the taxpayer sustained a capital loss, and the petitioner herein contended that the loss sustained was an ordinary loss.

The Board of Tax Appeals ruled the case in favor of the petitioner. Respondent appealed to the Circuit Court of Appeals, which reversed the Board and held that the loss was a capital loss.

The facts were stipulated and were found by both the Board of Tax Appeals and the United States Circuit Court of Appeals to be in accordance with the stipulation. These facts as found are, briefly:

On February 11, 1931, petitioner purchased certain real estate in St. Louis, Missouri. The purchase price was $35,400. At the time of the purchase there was a deed of

trust on the property in the amount of $15,000, and the balance of the purchase price, namely, $20,400, was paid by petitioner. The deed of trust was neither executed nor assumed by petitioner. The property was purchased subject to the deed of trust.

When petitioner purchased the property it was rented and the income therefrom was $160 per month. Shortly thereafter property values in the neighborhood deteriorated and the tenant refused to continue the payment of $160 per month. In August, 1931, respondent leased the property for a period of two years from September 15, 1931, to September 14, 1933, at a rental of $135 per month. In February, 1933, the rent was reduced to $115 per month. This amount of rent was collected until the end of the term of the lease in September, 1933.

Upon the termination of the lease the property became vacant and petitioner was never able to secure another tenant.

When the deed of trust became due on January 27, 1935, petitioner determined that his equity in the property was worthless. He refused to pay, and did not pay, the taxes for the year 1934. He determined to abandon the property and permit the holder of the deed of trust to foreclose.

The stipulation of facts recites:

> "At that time (January 27, 1935) business conditions had so completely changed in that particular locality that taxpayer's equity in the property was of no value."

The property was sold by the trustee named in the mortgage under the terms of the mortgage in foreclosure on March 16, 1935, and the price obtained at the sale was $10,000. The property was neither purchased by the peti-

tioner nor by the holder of the note secured by said mortgage.

The taxpayer (petitioner herein) not only lost his entire investment of $20,400, but the holder of the mortgage note lost $5,000 by reason of the loan on the property.

REASONS FOR THE ISSUANCE OF THE WRIT.

The decision of the United States Circuit Court of Appeals for the Eighth Circuit is in conflict with the decisions of the United States Circuit Courts of Appeals of other Circuits in the following cases:

Commissioner v. Freihoffer, 102 F. (2d) 787 (C. C. A. 3);
Commissioner v. Hoffmann, 117 F. (2d) 987 (C. C. A. 2);
Schmidlapp v. Commissioner, 96 F. (2d) 680 (C. C. A. 2);
Commissioner v. Coggan, 119 F. (2d) 504 (C. C. A. 1).

Respectfully submitted,

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